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10/826,530	04/16/2004	Mikhail R. Levit	HT4020 US NA	2157

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E I DU PONT DE NEMOURS AND COMPANY  
LEGAL PATENT RECORDS CENTER  
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EXAMINER
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FORTUNA, JOSE A

ART UNIT	PAPER NUMBER
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1791

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/826,530  
Filing Date: April 16, 2004  
Appellant(s): LEVIT, MIKHAIL R.

\_\_\_\_\_  
Frederick D. Strickland  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed September 19, 2008 appealing from the Office action mailed December 07, 2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,833,807	REMACHANDRAN et al.	11-1998
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**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Ramachandran et al., US Patent No. 5,833,807.

Ramachandran et al. teach an aramid paper comprising a p-aramid pulp, such as a KEVLAR<sup>®</sup> pulp, in amounts falling within the claimed range, i.e., at least 50%, and a floc, such as NOMEX<sup>®</sup>, column 2, line 18 through column 4, line 16. Ramachandran et al. teach the use of a binder and teach that such binders can be in the form of fibrils, see for example Ramachandran et al., column 3, lines 36-45

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Ramachandran et al. while not explicitly disclosing the ratio of fibers, they teach that the sheet contains between 5-95 of aramid fibers which includes at least one of aramid fibers or aramid floc, see column 4, lines 3-10. In the same lines they teach that the amount of fibers is selected to be convenient and to afford optimized dispersion and dispersion qualities. The latter clearly indicates that the proportion of fibers to floc can be optimized to desired requirements. It has been held that “[T]he discovery of an optimum value of a result effective variable in a known process is ordinarily within the skill of the art. *In re Antoine*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977); *In re Aller*, 42 CCPA 824, 220 F.2d 454, 105 USPQ 233 (1995).

As to the initial modulus, this is inherent to Ramachandran et al. invention since they use the same trademarks as the ones disclosed in the specification, i.e. NOMEX<sup>®</sup>.

#### **(10) Response to Argument**

Applicant's arguments, see remarks, filed September 19, 2008, with respect to the rejection under 35 U.S.C. §102(b)/103(a) over Levit et al have been fully considered and are persuasive. The rejection of claims 1-14 over Levit has been withdrawn.

Applicant's arguments, see remarks, filed September 19, 2008, with respect to the rejection under 35 U.S.C. §102(b) over Ramachandran et al. et al have been fully considered and are persuasive. The rejection of claims 1-14 under 35 U.S.C. 102(b) over Ramachandran et al. has been withdrawn.

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Applicant's arguments filed on September 19, 2008 with respect to the rejection over Ramachandran et al. under 35 U.S.C. §103(a), have been fully considered but they are not persuasive.

Applicants argues that even though Ramachandran et al. teaches the combination of fibers and floc as claimed, they do not teach the ratio of the two and that such ratio is not optimization effective variable. They also argue that cited reference does not teach the modulus below 3000 cN/tex of the floc. The arguments are not convincing for the following reasons:

The optimization of the ratio and/or amount of the raw materials in a mixture is within the levels of ordinary skill in the art. He/she would recognize that the properties of the formed product, the paper for this particular case would or could change depending upon the ratio of the different raw materials, including additives if any, and that is the first thing that one of ordinary skill in the art would do. The examiner contends that one of ordinary skill in the art would have reasonable expectation of success if the ratio of the fibers and floc were within the claimed ration, and barring unexpected results, such action, i.e., the optimization of the components in the mixture, would have been obvious to one of ordinary skill in the art. Note that it has been held that it is obvious to try, choosing from a finite number of identified, predictable solutions with a reasonable expectation of success. See recent Board decision *Ex parte Smith*, --USPQ2d--, slip op. at 20, (Bd. Pat. App. & Interf. June 25, 2007) (Citing KSR, 82 USPQ2d at 1396).

- As to the arguments that Ramachandran et al. do not teach the modulus of the floc, applicants have ignored the fact that the cited reference, Ramachandran et

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al., teaches the use of the same Tradenames NOMEX<sup>®</sup>, which is the same disclosed in the current specification as the floc having the claimed modulus, see example 1 of Ramachandran et al.

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/José A Fortuna/

Primary Examiner, Art Unit 1791

Conferees:

Steven Griffin

/Steven P. Griffin/

Supervisory Patent Examiner, Art Unit 1791

Patrick Ryan

/PATRICK RYAN/

Supervisory Patent Examiner, Art Unit 1795

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